

**STATE OF MICHIGAN**  
**DEPARTMENT OF CONSUMER & INDUSTRY SERVICES**  
**OFFICE OF FINANCIAL AND INSURANCE SERVICES**  
**DIVISION OF INSURANCE**  
**Before the Commissioner of Financial and Insurance Services**

**In the matter of**

**XXXXXXXXXX**

**Petitioner**

**File No. 52770-001**

**v**

**Blue Care Network of Michigan**

**Respondent**

\_\_\_\_\_/

**Issued and entered  
this 21<sup>st</sup> day of May, 2003  
By Linda A. Watters  
Commissioner**

**ORDER**

**I  
PROCEDURAL BACKGROUND**

On March 10, 2003 XXXXXXXXXXXX (Petitioner), filed a request for external review with the Commissioner of the Office of Financial and Insurance Services (Commissioner) under the Patient's Right to Independent Review Act (PRIRA) MCL 550.1901 *et seq.* After an assessment of the material submitted, the Commissioner accepted the request for external review.

A determination on medical issues was required. The Commissioner assigned the case to Permedion, an independent review organization (IRO). The Commissioner directed

Permedion to provide the opinion and recommendation of a medical expert. On March 28, 2003, the IRO completed its review and sent it to the Office of Financial and Insurance Services (OFIS).

## **II FACTUAL BACKGROUND**

Petitioner is a Blue Care Network of Michigan (BCN) member. He underwent a nocturnal polysomnograph (NPSG) on XXXXXXXX and was diagnosed with obstructive sleep apnea syndrome and periodic limb movement disorder. No snoring was observed during the NPSG while on continuous positive airway pressure (CPAP).

After two unsuccessful attempts to use the CPAP, Petitioner requested authorization and coverage for Uvulopalatopharyngoplasty (UVPPP) surgery. BCN denied his request. The petitioner does not meet BCN's medical criteria for the surgery. Petitioner exhausted BCN's internal grievance process and received its final adverse determination letter dated February 24, 2003.

## **III ISSUE**

Did BCN properly deny authorization for Petitioner's request for Uvulopalatopharyngoplasty surgery?

## **IV ANALYSIS**

### **PETITIONER'S ARGUMENT**

Petitioner has a history of sleep apnea. He has tried the CPAP machine on two separate occasions without relief for his sleep disorder. He has sleepless nights and daytime sleepiness. His employment requires a lot of driving during the day. He believes he should not be driving while sleep deprived.

Dr. XXXXXXXXXX, otolaryngologist, diagnosed Petitioner with obstructive sleep apnea, and proposed surgery because:

1. Petitioner has chronic snoring without the CPAP and daytime hypersomnia
2. Moderately large tonsils and a very large uvula
3. His Respiratory Disturbance Index (RDI) was about 7, his lowest oxygen saturation was 91%
4. He has tried the CPAP machine "diligently" but was unable to use it because of discomfort.

In a letter dated XXXXXXXXXXXXXXX, Dr. XXXX, BCN's independent reviewer, a surgeon with the XXXXXXXXXX Ear, Nose, Throat Center agreed surgery was indicated. He stated:

1. Petitioner has a respiratory stress index of about 7.
2. Petitioner was intolerant of the CPAP machine in treating his sleep disorder.
3. The UVPPP surgery with tonsillectomy was medically necessary
4. There is no further medical management available to be used in Petitioner's case.

The Petitioner is asking for the UVPPP surgery to be covered to treat his sleep disorder.

#### BCN'S ARGUMENT

Petitioner's XXXXXX NPS Interpretation Report reported no snoring on CPAP. The lowest oxygen saturation recorded was 91%. There were 18 respiratory events resulting in a RDI of 4.4 per hour. The CPAP eliminated most of the respiratory events. Two Hundred Nineteen (219) leg movements were recorded with periodic limb movement (PLMS) index of 31 per hour. Medical notes dated XXXXXXXXXXXXXXX, indicate Petitioner is 5'6" and weighs 179. He drinks a moderate amount of alcohol.

In its final adverse determination letter, BCN denied the requested surgery based upon its Medical Policy, which states in pertinent part:

#### **Surgical Treatment of Obstructive Sleep Apnea and Snoring**

Uvulopalatopharyngoplasty is a covered benefit when performed for documented cases of sleep apnea with failed medical

management. Requests are prospectively reviewed with appropriate documentation, which must include all of the following:

Documentation of a failed trial of nasal CPAP. Refusal to try CPAP is not a criterion for approval of the surgery.

Patient history and symptoms, including witnessed apneas, hypersomnolence, choking sensations during sleep, etc.

Report of physical exam of the oropharynx showing abnormal anatomy such as redundant oropharyngeal tissue, boggy mucosa, etc.

Current sleep study results (within 6 months) including a working diagnosis of moderate to severe sleep apnea (respiratory disturbance index (RDI)/apnea-hypopnea index over 15, severe hypersomnolence and oxygen desaturations falling below 85%) and diagnosis of upper airway obstruction based on EEG arousal index of 10.

Documentation of failed, reasonable attempts at medical management that should include weight loss, alcohol avoidance, appropriate medication management, oral devices and smoking cessation.

The Petitioner's sleep study results do not establish the petitioner meets the criteria under BCN's medical policy for UVPPP surgery.

#### IRO RECOMMENDATION

A physician, board certified in Otolaryngology, who is a fellow in the American College of Surgeons, American Academy of Otolaryngology-Head and Neck Surgery and the American Academy of Facial Plastic and Reconstructive Surgery reviewed this case. The expert's review of Petitioner's medicals found "a normotensive, (if not relatively hypotensive), moderately overweight patient with significant daytime hypersomnolence who has tried CPAP without much relief." The otolaryngologic exam reveals potential oro-pharyngeal airway obstruction. The nocturnal polysomnogram reveals multiple arousals, significant periodic leg movements, and minimal respiratory distress with negligible oxygen desaturation. The Petitioner does not satisfy the criteria for the diagnosis of obstructive sleep apnea, but there may be some other underlying medical condition responsible for the hypersomnolence. The expert agreed with BCN's denial of UVPPP surgery.

## COMMISSIONER'S REVIEW

The Commissioner carefully reviewed the arguments and documents presented by the parties in this case, as well as the findings of the IRO. The focus of this analysis is whether BCN properly denied the Petitioner authorization and coverage for UVPPP surgery under the Petitioner's Certificate of Coverage. The BCN Certificate of Coverage (Certificate) controls the analysis in this case. Sections I.01 and 1.02 under Schedule of Benefits, and Section 8.07 of the General Provisions state in pertinent part:

### I. SCHEDULE OF BENEFITS

#### 1.01 GENERAL RESTRICTIONS

This Health Plan is a health maintenance organization which operates on a direct service rather than indemnity basis.

Except for emergency care under Section 1.05, coverage under this Certificate for services and benefits listed below is available only when provided, authorized, or approved by Health Plan. Except as expressly provided in this Article, only services which are medically necessary according to generally accepted standards of practice are benefits under this Certificate. The services and benefits listed below are subject to the limitations and exclusions set forth in Article II of this Schedule of Benefits.

#### 1.02 PROFESSIONAL SERVICES

F. Surgery when determined to be medically necessary.

### VIII. GENERAL PROVISIONS

#### 8.07 POLICIES AND REGULATIONS

Health Plan may adopt reasonable policies, procedures, rules, and interpretation to promote orderly and efficient administration of this certificate.

The BCN Certificate allows for coverage of surgery when it is determined to be medically necessary. BCN has medical policies that set forth the criteria which must be met for a service to be payable. In the present case, the medical policy that applies to UVPPP surgery is detailed

in BCN's argument above. In its final adverse determination, BCN denied the surgery because the petitioner's medical condition did not meet the criteria in the medical policy.

The Commissioner agrees with the IRO's findings that the proposed treatment does not meet the criteria set forth in BCN's medical policy regarding the UVPPP surgery. The evidence presented in this case fails to demonstrate that the Petitioner has significant respiratory distress and oxygen desaturation. The Commissioner finds BCN's denial to be reasonable. Accordingly, the Commissioner finds BCN's final adverse determination is valid.

## **V ORDER**

The Commissioner upholds BCN's February 24, 2003, final adverse determination. BCN properly denied Petitioner authorization and coverage for uvulopalatoplasty surgery.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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Linda A. Watters  
Commissioner